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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

MICHELLE HILL, Plaintiff and Appellant, v. P.K. SCHRIEFFER LLP, et al., Defendants and Respondents.	B204269 (Los Angeles County Super. Ct. No. BC353184)

APPEAL from an order of dismissal of the Superior Court of Los Angeles County, Elizabeth A. Grimes, Judge. Dismissed in part and affirmed in part.

Law Offices of Nate G. Kraut and Nate G. Kraut for Plaintiff and Appellant Michelle Hill.

Best Best & Krieger, J. Michael Summerour and Jerry R. Dagrella for Defendants and Respondents P.K.Schrieffer LLP, Paul Schrieffer and Norma Schrieffer.

Kaufman, Borgeest & Ryan, Jeffrey S. Whittington and Nicholas W. Sarris for Defendants and Respondents Kaufman, Borgeest & Ryan, LLP and Judith Fisher.

Michelle Hill, a former associate with the law firm of P.K. Schrieffer LLP (PKS), filed this action in June 2006 alleging various tort and wage claims against her former employer, its principal Paul Schrieffer, and his wife Norma Schrieffer, the firm administrator, as well as claims for interference with contract and intentional infliction of emotional distress against a second law firm, Kaufman, Borgeest & Ryan LLP (KBR), and one of its New York partners, Judith Fisher. In December 2006 the trial court granted Fisher's motion to quash service of summons and sustained defendants' respective demurrers to most portions of the first amended complaint without leave to amend. Six months later, in May 2007, the trial court granted PKS's motion for summary judgment on the remaining wage claims and entered judgment on the complaint in favor of PKS. In November 2007 Hill filed what purported to be a dismissal of the first amended complaint and appealed the trial court's orders sustaining the demurrers without leave to amend and granting Fisher's motion to quash. We dismiss her appeal in part and affirm in part.

FACTUAL AND PROCEDURAL BACKGROUND

The operative first amended complaint[1] alleges Hill worked for more than six years as an associate attorney at PKS. Hill's problems with Paul Schrieffer, the senior partner of PKS, began in late 2003 when, she alleges, he urged a client to settle a case due to his failure to prepare for trial. According to Hill, Schrieffer became angry at KBR, which represented the client's insurer and had directed the client to PKS, when KBR insisted the client contribute to the settlement. Schrieffer complained KBR should be reported to the Department of Insurance. The case eventually settled, and Schrieffer directed Hill to solicit a letter from the client praising PKS's work on the case. Hill obtained the letter but did not review it before forwarding it to Schrieffer. Schrieffer too neglected to review the letter but approved its transmission to KBR and the insurer. Too late, Hill and Schrieffer discovered the client had recited Schrieffer's complaint KBR should be reported to the Department of Insurance. Rather than injure KBR's

[1] Hill never served her original complaint and filed the first amended complaint on August 29, 2006.

relationship with the insurer, however, the letter prompted KBR to commence an investigation into PKS's performance in employment cases, which it concluded was poor. In a June 2004 conversation with Fisher and others at KBR, Schrieffer blamed Hill for the firm's poor performance. Fisher then told Schieffer, in what Hill alleges was an intentional misrepresentation, Hill had failed to prepare for a deposition in a KBR matter. Fisher told Schrieffer she no longer wanted Hill to work on KBR cases.

Hill alleges Schrieffer removed her from working on KBR cases, and she was no longer given the annual salary increases she previously enjoyed. As a result, Hill's health deteriorated; and she developed a variety of physical stress symptoms, which caused her to be hospitalized in July 2004. During Hill's absence from the firm, Norma Schrieffer, acting on behalf of the firm, terminated Hill's medical insurance coverage for an unspecified length of time and advised the Internal Revenue Service Hill had been paid as an independent contractor in 2004, thus exposing Hill to a tax audit. Nonetheless, Hill returned to work in August 2004, where she continued to have misunderstandings and conflict with Paul Schrieffer. According to Hill, Schrieffer, despite repeated requests, failed to meet with her about an August 2005 mediation and then complained, after the fact, she had mishandled the case. Hill's employment with PKS ended in September 2005.

The operative complaint was filed on August 29, 2006. The PKS defendants demurred to the first three causes of action for defamation and intentional infliction of emotional distress and moved to strike Hill's request for punitive damages. KBR separately demurred to the ninth and tenth causes of action (the only ones asserted against it) and also filed a motion to strike Hill's request for punitive damages. Fisher filed a motion to quash service of the summons on the ground she was not subject to personal jurisdiction in California. Hill failed to oppose PKS's demurrers and motion to strike; the demurrers were sustained without leave to amend and the motion to strike granted on November 30, 2006. On December 7, 2006 the trial court sustained KBR's demurrers to the ninth and tenth causes of action without leave to amend. The court also granted

Fisher's motion to quash service. Two separate notices of ruling were filed and served, but no dismissals were entered.

In May 2007 the trial court granted PKS's motion for summary judgment on the five remaining claims. On May 18, 2007 PKS obtained a signed judgment stating, "The Court, having granted the Motion for Summary Judgment of Defendant P.K. Schreiffer, LLP ('Defendant') as to the First Amended Complaint of Plaintiff Michelle E. Hill ('Plaintiff') by written order, and having further ordered entry of judgment as requested in said motion, and good cause appearing therefor[], [¶] IT IS ORDERED, ADJUDGED AND DECREED: [¶] That judgment is entered in favor of Defendant and against Plaintiff, and that Plaintiff take nothing by way of her Complaint against Defendant, and that Defendant shall recover its costs of suit herein."

On May 25, 2007 Hill's counsel filed three separate notices of appeal, the first from the November 30, 2006 order sustaining PKS's demurrers (albeit characterizing the order as a dismissal), the second from the December 6, 2006 ruling on the KBR demurrers (again, mischaracterizing the order as a dismissal) and the third from the May 18, 2007 judgment (albeit misstating the date as May 4, 2007). The appeals were dismissed on July 26, 2007 after Hill's counsel failed to pay required filing and reporters' fees. The remittiturs for each appeal issued on September 28, 2007. The Court of Appeal subsequently denied Hill's motion to recall the remittiturs and reinstate the appeals. (See *Hill v. P.K. Schrieffer, LLP,* Case No. B199487.)

On November 15, 2007 Hill procured an order of dismissal of all of the claims resolved on demurrer the previous year. On December 4, 2007 Hill filed this second appeal.

DISCUSSION

1. *Portions of Hill's Appeal Are Untimely*

If it appears an appeal was not taken within the applicable jurisdictional period, an appellate court has no discretion and must dismiss the appeal on its own motion, even if no objection has been made. (See *Annette F. v. Sharon S.* (2005) 130 Cal.App.4th 1448, 1458; *Estate of Hanley* (1943) 23 Cal.2d 120, 123.) The timeliness of an appeal is

"governed by rule 8.104(a), which provides as follows: 'Unless a statute or rule 8.108 provides otherwise, a notice of appeal must be filed on or before the earliest of: [¶] (1) 60 days after the superior court clerk mails the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, showing the date either was mailed; [¶] (2) 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a file-stamped copy of the judgment, accompanied by proof of service; or [¶] (3) 180 days after entry of judgment.' The term 'judgment,' for purposes of rule 8.104(a), includes an appealable order. (Cal. Rules of Court, rule 8.104(f).)" (*Alan v. American Honda Motor Co., Inc.* (2007) 40 Cal.4th 894, 898, fn. omitted.)

Hill filed her notice of appeal on December 4, 2007, more than 180 days after the trial court entered judgment in favor of PKS on May 18, 2007 and a year after the rulings on the demurrers and motion to quash. The threshold question presented in this appeal is whether any of her claims remain viable on appeal. (See *Jennings v. Marralle* (1994) 8 Cal.4th 121, 126 ["A reviewing court must raise the issue on its own initiative whenever a doubt exists as to whether the trial court has entered a final judgment or other order or judgment made appealable by Code of Civil Procedure section 904.1."].)

a. *The May 18, 2007 judgment renders Hill's appeal from the dismissal of the claims against PKS untimely*

The first amended complaint asserted eight causes of action against the PKS defendants. The first two causes of action (defamation and intentional infliction of emotional distress) were asserted jointly against PKS and Paul Schrieffer, and the third cause of action (intentional infliction of emotional distress) was asserted jointly against PKS and Norma Schrieffer. The five remaining causes of action were asserted solely against PKS.

The trial court sustained the demurrers to the first three causes of action without leave to amend after Hill failed to file any opposition to the demurrers. Six months later the trial court granted PKS's motion for summary judgment on the remaining five causes of action, thereby resolving all causes of action against the PKS defendants.

In this appeal Hill elected not to challenge the court's order granting summary judgment on the five causes of action included in PKS's motion, but instead reaches back to challenge the trial court's November 30, 2006 ruling against her on the demurrers, based on the purported order of dismissal she procured in November 2007. This attempt to revive her right to appeal as to those claims is misconceived.

After the November 30, 2006 ruling on the demurrers, the first three causes of action and the two individual defendants (both sued because of their actions taken as agents of PKS) were eliminated from the case pending entry of judgment, by dismissal or otherwise. After obtaining summary judgment on the five remaining claims asserted solely against the firm itself, PKS prepared a judgment for the court to sign directing that Hill would take nothing by her complaint against PKS. That was indisputably a final judgment as to PKS, from which Hill failed to timely appeal.

b. *The judgment in favor of PKS is reasonably construed to embrace all PKS defendants*

We conclude—as we infer the trial court intended—the judgment in favor of PKS likewise bars Hill's appeal of the order sustaining the demurrers of the individual PKS defendants, Paul and Norma Schrieffer. The record certainly supports this assumption: Having sustained the PKS defendants' demurrers to Hill's first amended complaint without leave to amend, the surviving causes of action pertained solely to PKS, the entity. When summary judgment was entered in PKS's favor, the trial court signed a judgment confirming Hill would take nothing by her complaint against PKS, as well as, inferentially, its agents. While the failure to specify the PKS defendants in the judgment was most likely attributable to sloppy lawyering, "there was nothing further in the nature of judicial action on the part of the court essential to a final determination of the asserted rights of the respective parties." (*Eldridge v. Burns* (1978) 76 Cal.App.3d 396, 405.) Accordingly, the judgment entered on May 18, 2007 is most reasonably construed as a final adjudication disposing of all issues between the opposing parties—Hill, on the one hand, and PKS and its agents, on the other. (See, e.g., *California Assn. of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 9 ["A judgment that leaves no issue to be

determined except the fact of compliance with its terms is appealable."]; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741 ["Judgments that leave nothing to be decided between one or more parties and their adversaries, or that can be amended to encompass all controverted issues, have the finality required by [Code Civ. Proc., §] 904.1, subd[.] (a)."]; *Wilson v. Sharp* (1954) 42 Cal.2d 675, 677.)

c. *Hill's appeal from the trial court's order quashing service on Fisher is untimely*

An order granting a motion to quash service of summons is an appealable order. (Code Civ. Proc. § 904.1, subd. (a)(3); *Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1248.) For purposes of California Rules of Court, rule 8.104, "'an appealable order' is deemed entered on the date of its entry in the minutes, unless the minute order directs that a written order be prepared, in which case the order is deemed entered on the date a signed order is filed." (*Matera v. McLeod* (2006) 145 Cal.App.4th 44, 59; see Cal. Rule of Court, rule 8.104(d)(2).) The order granting Fisher's motion to quash service was issued and entered on the court's minutes on December 6, 2006, and KBR was directed to give notice of the ruling. No other order was prepared. Because the order was deemed entered on December 6, 2006, nearly a year before Hill filed her notice of appeal, her appeal is untimely. Consequently, we dismiss her appeal from this order.

d. *Hill's appeal from the order sustaining the KBR demurrers without leave to amend is timely*

"An appeal does not lie from an order sustaining a demurrer without leave to amend." (*Singhania v. Uttarwar* (2006) 136 Cal.App.4th 416, 425; see also *Vibert v. Berger* (1966) 64 Cal.2d 65, 67 ["our courts have held it to be 'hornbook law that [an] order sustaining a demurrer is interlocutory, is not appealable, and that the appeal must be taken from the subsequently entered judgment'"]; *De La Beckwith v. Superior Court* (1905) 146 Cal. 496, 500-501 [in absence of final judgment, party whose demurrer has been sustained without leave to amend "has never really been effectually dismissed from the action"; court has the power "at any time prior to final judgment in favor of a party, to reconsider a ruling sustaining his demurrer to a pleading"].)

After KBR prevailed on its demurrers to the first amended complaint, it failed to obtain a dismissal of the first amended complaint or pursue any other form of judgment. Consequently, the dismissal procured by Hill terminated the case effective November 15, 2007, and her notice of appeal filed December 4, 2007 was timely as to KBR.

2. *The Trial Court Properly Sustained KBR's Demurrers to the First Amended Complaint*

a. *The standard of review on appeal from a demurrer*

On appeal from an order dismissing an action after the sustaining of a demurrer, we independently review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We give the complaint a reasonable interpretation, "treat[ing] the demurrer as admitting all material facts properly pleaded," but do not "assume the truth of contentions, deductions or conclusions of law." (*Aubry*, at p. 967; accord, *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.) We liberally construe the pleading with a view to substantial justice between the parties. (Code Civ. Proc., § 452; *Kotlar v. Hartford Fire Ins. Co.* (2000) 83 Cal.App.4th 1116, 1120.)

"'Where the complaint is defective, "[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his [or her] complaint."'" (*Aubry v. Tri-City Hospital Dist., supra,* 2 Cal.4th at pp. 970-971.) Leave to amend may be granted on appeal even in the absence of a request by the plaintiff to amend the complaint. (*Id.* at p. 971; see Code Civ. Proc., § 472c, subd. (a).) We determine whether the plaintiff has shown "in what manner he [or she] can amend [the] complaint and how that amendment will change the legal effect of [the] pleading." (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) "[L]eave to amend should *not* be granted where . . . amendment would be futile." (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685; see generally *Caliber Bodyworks, Inc. v. Superior Court* (2005) 134 Cal.App.4th 365, 373-374.)

b. *Intentional interference with economic relations*

The elements of a cause of action for interference with prospective economic advantage are: (1) an economic relationship between the plaintiff and a third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional and wrongful conduct designed to interfere with or disrupt this relationship; (4) interference with or disruption of this relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's wrongful conduct. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1153-1154.)

To establish intentional interference with prospective economic advantage, a plaintiff must plead and prove "the defendant's interference was wrongful 'by some measure beyond the fact of interference itself.'" (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393.) An act is independently wrongful "if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Korea Supply Co. v. Lockheed Martin Corp., supra,* 29 Cal.4th at p. 1159.)

Hill's claim founders on this requirement. Although she alleges Fisher, acting on behalf of KBR, intentionally lied when she told Paul Schrieffer that Hill had failed to prepare for a deposition and wrongfully told Schrieffer she did not want Hill working on KBR cases, those comments are far from actionable in this context. To begin with, Hill's own allegations establish PKS's performance on KBR cases was inferior, whether or not that impaired performance was attributable to Hill. As the trial court ruled, KBR was free to choose the lawyers it wanted to work on the cases it monitored on behalf of its client, the insurer, and free to evaluate their performance. Fisher's adverse opinion of Hill's performance, based on accurate facts or not, justified her directive that Hill no longer work on KBR cases.

Hill's reliance on *Slaughter v. Friedman* (1982) 32 Cal.3d 149 for the proposition Fisher's comments were not protected opinion is misplaced. In *Slaughter* a dentist sued an insurer for stating in its letters denying certain costs claimed by insureds that the

dentist had performed unnecessary procedures and overcharged for those procedures. The Supreme Court reversed the trial court's order sustaining a demurrer on the ground the statements were protected opinion. The Supreme Court reasoned, "[a]lthough accusations of 'excessive' fees or 'unnecessary' work when made by laymen might indeed constitute mere opinion, similar accusations by professional dental plan administrators carry a ring of authenticity and reasonably might be understood as being based on fact." (*Id.* at p. 154.)

Fisher's comments here, however, were made to Paul Schrieffer in the context of an evaluative discussion of PKS's performance on KBR cases. Unlike the insureds who might be misled to rely on the insurer's statements as factually based, Paul Schrieffer was responsible for raising his firm's performance to meet the standard expected by KBR. A candid discussion of PKS's perceived failings—whether or not wholly accurate—was entirely proper. Like the trial court, we are unwilling to impose tort liability on such a discussion.[2]

c. *Intentional infliction of emotional distress*

"The elements of a prima facie case of intentional infliction of emotional distress consist of: (1) extreme and outrageous conduct by the defendant with the intent to cause, or reckless disregard for the probability of causing, emotional distress; (2) suffering of severe or extreme emotional distress by the plaintiff; and (3) the plaintiff's emotional distress is actually and proximately the result of defendant's outrageous conduct." (*Conley v. Roman Catholic Archbishop* (2000) 85 Cal.App.4th 1126, 1133.) Extreme and outrageous conduct is behavior "'so extreme as to exceed all bounds of that usually tolerated in a civilized community.'" (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001.) """[I]t is for the court to determine, in the first instance, whether the

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[2] Hill's proffered amendment to allege Hill had a contractual relationship with PKS would not alter this conclusion. To state a cause of action for interference with an at-will employment relationship, a plaintiff must allege the same elements—including wrongful conduct—required to allege a cause of action for interference with a prospective economic advantage. (See *Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1152.)

defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery."'" (*Fowler v. Varian Associates, Inc.* (1987) 196 Cal.App.3d 34, 44.)

Again, Fisher's determination she did not want Hill to work on KBR cases is not actionable in this context. Hill's allegations establish that Fisher's instruction Hill should not work on KBR cases was precipitated by Hill's ongoing conflict with Schrieffer, her supervisor. It is hardly outrageous for Fisher to have made a business determination she did not want Hill to work on KBR matters, especially in light of the justification contained in Hill's own pleading.

DISPOSITION

Hill's appeal of the trial court's order sustaining the demurrers of the PKS defendants and granting its motion to strike is dismissed. Hill's appeal of the order granting Fisher's motion to quash service of summons is also dismissed. The trial court's orders sustaining KBR's demurrers to the ninth and tenth causes of action without leave to amend are affirmed. PKS, Paul Schrieffer, Norma Schrieffer, KBR and Fisher are to recover their costs of appeal.

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PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.